Lee Guan Par v Hotel Universal Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO M–02–51 OF 2004
GOPAL SRI RAM, ABDUL KADIR SULAIMAN AND NIK HASHIM JJCA
28 APRIL 2005

Civil Law Act — Interest — Interest on costs — Pre judgment interest — Civil Law Act 1956 s 11

Civil Procedure — Costs — Successful party, when entitled to costs — Cost follow the event — Rules of the High Court 1980 O 59 r 3(2)

Civil Procedure — Injunction — Mareva injunction — Injunction obtained — Application for further argument in open court — Main trial concluded — Injunction to be discharged

Landlord and Tenant — Determination — Fixed Term — Notice — Request for delivery of vacant possession — Whether there was termination — Whether repudiated tenancy by refusing to pay rent

Landlord and Tenant — Determination — Fixed Term — Oral tenancy — Status of tenant — Whether there was oral tenancy — Whether there was breach of tenancy

Landlord and Tenant — Determination — Forcible entry — Whether landlord liable to pay damages for trespass

By a tenancy agreement ('the tenancy agreement'), the respondent agreed to let to the appellant the premises. By an undated letter, the appellant purported to renew the tenancy for a period of one year. Subsequently, by a letter the respondent through its solicitors gave notice to the appellant to quit and deliver vacant possession of the premises to the respondent. From 1 July 1991 to 14 August 1994 ('the said period'), the appellant continued to be in possession of the said premises but failed or refused to pay any rent for the said period. The above disputes had resulted in three suits between the parties. The first suit was filed by Silver Merlin (SM), a partnership firm wherein the appellant was a partner, against the respondent to obtain an injunction restraining the respondent from entering or evicting SM from the premises. The second suit was instituted by the respondent against SM to restrain SM from, *inter alia*, entering and or remaining in the premises. The third suit was filed by the respondent against the appellant for a *mareva* injunction against the appellant. The High Court allowed the consolidation of the third suit with the first and second suits. The High Court ordered the appellant to pay to the respondent rental for the said period together with interest, with costs to be taxed. The respondent was ordered to pay the appellant damages for unlawful entry into the premises. Finally the High Court ordered that the respondent's application for a *mareva* injunction be postponed for further argument if the respondent was still desirous of proceeding with the mareva injunction. The appellant appealed to the Court of Appeal. The respondent cross appealed.

Held, dismissing the appellant's appeal and allowing the respondent's appeal:

(1) On the question of costs, the respondent was successful in obtaining judgment against the appellant in respect of its claim for rental for the said period. Hence the respondent was entitled to costs as costs follow the event: O 59 r 3(2) of the Rules of High Court 1980 ('RHC 1980'). Costs were always in the discretion of the court. In the present case, the appellant had not shown any good reason or any ground whatsoever that the High Court had misdirected itself on the law and or on the facts on the question of costs (see para 19 and 22).

(2) Unlike O 42 r 12 of the RHC 1980 which governs only the post-judgment interest, s 11 of the Civil Law Act 1956 ('Act 67') provides for the pre-judgment interest. Section 11 clearly conferred on the court a discretion to award interest on the amount for the period before judgment. The basis on which the High Court have acted in awarding interest under s 11 was that the appellant had kept the respondent out of the money which ought to have been paid to him and since the appellant has had the use of the money the appellant ought to compensate the respondent accordingly (see para 24 and 25)

(3) There was no breach of tenancy agreement by the respondent as there was no oral tenancy agreement between the parties and even if there was, the appellant had repudiated the same by failing or refusing to pay the rent for the said period thereby entitling the respondent to terminate the contract and sue the appellant for the damages (see para 27).

(4) The respondent had already obtained the *mareva* injunction and it was the appellant who applied for further argument in open court in respect of the said injunction. Therefore, since the appellant had failed to pursue it at the trial the High Court ought to have dismissed the said application. Moreover, the *mareva* injunction expired on the conclusion of the trial. Hence, it ought to be discharged forthwith (see para 28).

(5) SM, being a partnership, was not entitled in law to hold a tenancy and that it was SM and not the appellant who was in occupation of the premises during the said period. The appellant had repudiated the tenancy and hence the respondent's entry into the said premises was not unlawful and therefore the appellant's counterclaim for damages ought to have been dismissed with costs. In addition, when the appellant persisted in remaining in occupation of the premises in the said period without paying any rent, he was wilfully in unlawful occupation thereof and was in law a trespasser which entitled the respondent to claim double rent (see para 30, 31 and 35).

[**Bahasa Malaysia summary**

Melalui satu perjanjian penyewaan ('perjanjian penyewaan'), responden telah bersetuju untuk menyewa kepada perayu premis tersebut. Melalui satu surat tidak bertarikh, perayu dikatakan ingin memperbaharui penyewaan untuk tempoh satu tahun. Berikutan itu, melalui sepucuk surat responden melalui peguam belanya memberi notis kepada perayu untuk keluar dan menyerahkan milikan kosong premis tersebut kepada responden. Daripada 1 Julai 1991 hingga 14 Ogos 1994 ('tempoh tersebut'), perayu terus berada dalam milikan premis tersebut tetapi gagal atau enggan membayar apa-apa sewa untuk tempoh tersebut. Pertikaian di atas telah menimbulkan tiga guaman antara pihak-pihak. Guaman pertama telah difailkan oleh Silver Merlin ('SM'), sebuah firma perkongsian di mana perayu adalah rakan kongsi, terhadap responden untuk mendapat satu injunksi menghalang responden daripada memasuki atau mengeluarkan SM dari premis tersebut. Guaman kedua dimulakan oleh responden terhadap SM untuk menghalang SM daripada, antara lain, memasuki dan atau kekal di atas premis tersebut. Guaman ketiga difailkan oleh responden terhadap perayu untuk mendapat injunksi *mareva* terhadap perayu. Mahkamah Tinggi memerintahkan perayu membayar kepada responden sewa untuk tempoh tersebut berserta faedah, dengan kos untuk ditentukan. Responden diperintahkan membayar perayu ganti rugi kerana masuk secara tidak sah ke dalam premis tersebut. Akhirnya Mahkamah Tinggi memerintahkan permohonan responden untuk satu injunksi *mareva* ditangguhkan untuk hujah selanjutnya jika responden masih berhasrat untuk meneruskan dengan injunksi *mareva*. Perayu telah membuat rayuan kepada Mahkamah Rayuan. Responden telah membuat rayuan balas.

Diputuskan, menolak rayuan perayu dan membenarkan rayuan responden:

(1) Berhubung persoalan tentang kos, responden berjaya mendapat penghakiman terhadap perayu berkaitan tuntutannya untuk sewa bagi tempoh tersebut. Justeru itu responden berhak mendapat kos untuk kos berikutan kejadian tersebut: A 59 k 3(2) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). Kos sentiasa merupakan budi bicara mahkamah. Dalam kes semasa, perayu tidak menunjukkan apa-apa alasan baik atau apa-apa alasan langsung yang mana Mahkamah Tinggi telah melakukan salah arah dari segi undang-undang atau berdasarkan fakta berhubung persoalan tentang kos (lihat perenggan 19 dan 22).

(2) Tidak seperti A 42 k 12 KMT yang hanya mengawal faedah selepas penghakiman, s 11 Akta Undang-Undang Sivil 1956 memperuntukkan faedah sebelum penghakiman. Seksyen 11 dengan jelas memberikan mahkamah budi bicara untuk mengawardkan faedah ke atas jumlah bagi tempoh sebelum penghakiman. Asas yang mana Mahkamah Tinggi bertindak dalam mengawardkan faedah di bawah s 11 adalah di mana perayu tidak membayar kepada responden apa yang patut dibayarkan

kepadanya dan memandangkan perayu telah menggunakan wang tersebut, perayu patut membayar apa yang sewajarnya kepada responden (lihat perenggan 24 dan 25).

(3) Tiada perlanggaran perjanjian penyewaan oleh responden kerana tiada perjanjian penyewaan secara lisan antara pihak-pihak dan jika adapun, perayu telah menamatkannya kerana gagal atau enggan membayar sewa untuk tempoh tersebut yang dengan itu memberi hak kepada responden untuk menamatkan kontrak dan menyaman perayu untuk ganti rugi (lihat perenggan 27).

(4) Responden telah pun mendapat injunksi *mareva* dan perayulah yang memohon untuk hujah diteruskan di mahkamah terbuka berhubung injunksi tersebut. Oleh itu, memandangkan perayu telah gagal untuk meneruskannya semasa perbicaraan, Mahkamah Tinggi patut menolak permohonan tersebut. Tambahan pula, injunksi *mareva* itu telah luput masa di akhir perbicaraan. Justeru itu, ia patut dibatalkan (lihat perenggan 28).

(5) SM, yang merupakan satu perkongsian, tidak berhak di sisi undang-undang untuk memegang penyewaan dan ia adalah SM dan bukan perayu yang menetap di premis tersebut semasa tempoh tersebut. Perayu telah menamatkan penyewaan itu dan oleh demikian kemasukan responden ke dalam premis tersebut tidaklah salah di sisi undang-undang dan dengan itu tuntutan balas perayu untuk ganti rugi patut ditolak dengan kos. Tambahan pula, apabila perayu mendesak untuk kekal menetap di premis tersebut dalam tempoh tersebut tanpa membayar apa-apa sewa, beliau dengan sengaja menetap secara tidak sah dan di sisi undang-undang adalah penceroboh yang memberikan hak kepada responden untuk menuntut sewa berganda (lihat perenggan 30, 31 dan 35).]

Notes

For a case on forcible entry, see 9 *Mallal's Digest* (4th Ed, 2002 Reissue) para 889.
For a case on when successful party entitled to costs, see 2(1) *Mallal's Digest* (4th Ed, 2004 Reissue) para 1914.
For cases on fixed term, see 9 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 886–888.
For cases on interest generally, see 2(1) *Mallal's Digest* (4th Ed, 2002 Reissue) paras 3207–3271.
For cases on *mareva* injunction, see 2(1) *Mallal's Digest* (4th Ed, 2004 Reissue) paras 3083–3157.

Cases referred to

Harbutt's 'Plasticine' Ltd v Wayne Tank & Pump Co Ltd [1970] 1 QB 447 (refd)
Lim Cheng Wah v Ng Yaw Kim [1985] 2 MLJ 82 (refd)
Petroliam Nasional Bhd (Petronas) & Anor v Cheah Kam Chiew [1987] 1 MLJ 25 (refd)

A *Sivalingam a/l Periasamy v Periasamy & Anor* [1995] 3 MLJ 395 (refd)
Wee Tiang Yap v Chan Chan Brothers [1986] 1 MLJ 47 (refd)

Legislation referred to

B Civil Law Act 1956 ss 11, 28(4)(a)
Rules of High Court 1980 O 42 r 12, O 59 r 3(2)

Appeal from: Civil Suit No 22–3 of 1996 (High Court, Melaka)

C *Hilary D'cruz (YS Leong with her) (San Leong) for the appellant.*
Manjit Singh (Philip Choong with him) (Phillip Choong & Co) for the respondent.

Nik Hashim JCA (delivering judgment of the court):

D **[1]** The agreed facts are that vide an agreement dated 13 August 1988 ('the tenancy agreement') the respondent agreed to let to the appellant the premises comprising of an eight-storey building for a term of two years commencing from 15 August 1998 to 14 August 1990 at a rental of RM129,000 per year (RM10,750 per month) payable in four quarterly payments. Pursuant to that
E agreement a deposit payment of RM43,000 was made to the respondent by the appellant.

[2] By an undated letter the appellant purported to renew the tenancy for a period of one year at a monthly rental of RM10,750. An undated cheque was forwarded by the appellant to the respondent as payment of the deposit.

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[3] By a letter dated 13 April 1990, the respondent returned the said cheque and informed the appellant that he had failed to comply with cl 7 of the tenancy agreement which requires a six months prior notice to exercise the option for renewal of the tenancy for another one year.

G **[4]** By a letter dated 20 July 1990 the respondent offered the appellant a tenancy for a further period of one year upon the terms and conditions therein contained. The appellant by a letter dated 5 September 1990 informed the respondent that he had not agreed to the said terms and conditions.

H **[5]** However, the appellant continued paying rental at quarterly intervals and the respondent kept on accepting the same until June 1991. By a letter dated 21 June 1991 the respondent through its solicitors gave notice to the appellant to quit and deliver vacant possession of the premises to the respondent on or before 31 July 1991.

I **[6]** By a letter dated 9 July 1991 the appellant forwarded a cheque for RM61,500 to the respondent being payment of rent as follows:

(i)	rent for the period of 1 July 1991 to 31 July 1991	RM15,000
(ii)	rent for the period of 1 August 1991 to 14 August 1991	RM7,500
(iii)	rent for the period of 15 August 1991 to 31 August 1991	RM13,000
(iv)	rent for the period 1 September 1991 to 30 September 1991	RM26,000
	Total	RM61,500

[7] The respondent, however, by a letter dated 11 July 1991, returned the said cheque to the appellant and informed the appellant that in view of the respondent's notice to quit dated 21 June 1991 the respondent would accept rental for the month of July 1991 only and requested the appellant to issue a cheque for the sum of RM15,000 being rental for the month of July 1991 only. The appellant did not respond nor did he pay the July rent as requested.

[8] From 1 July 1991 to 14 August 1994 the appellant continued to be in possession of the said premises but failed or refused to pay any rent for the said period.

[9] The above disputes had resulted in three suits between the parties, and they are:

(i) Kuala Lumpur High Court Civil Suit No S1–22–328 of 1991. This suit was transferred to the Muar High Court and registered as Muar High Court Suit No 22–6 of 1992 ('the first suit').

(ii) Muar High Court Civil Suit No 22–4 of 1992 ('the second suit').

(iii) Muar High Court Civil Suit No 22–8 of 1992 ('the third suit').

[10] The first suit was filed by Silver Merlin ('SM'), a partnership firm wherein the appellant was a partner, against the respondent and obtained the following reliefs:

(i) An injunction dated 31 July 1991 restraining the respondent from entering or evicting SM from the said premises.

(ii) Injunction dated 8 August 1991 restraining the respondent from remaining on the said premises and or interfering with or preventing SM, its agents from entering the said premises or to be within an area of 10 metres from the said premises or to determine the tenancy agreement between the respondent and SM for a period of three years from 15 August 1991 to 14 August 1994.

[11] An application by the respondent to set aside the injunction orders was dismissed by the High Court but on appeal the Supreme Court allowed the injunctions to be set aside.

[12] The second suit was instituted by the respondent against SM. On 12 April 1992 the High Court allowed the respondent's application to restrain SM from, *inter alia*, entering and or remaining in the said premises. On appeal, the Supreme Court allowed the appeal and set aside the order. The respondent's application dated 26 May 1992 for an order that SM do forthwith quit and deliver vacant possession of the said premises was dismissed by the High Court on 7 June 1992. On appeal the dismissal was upheld by the Supreme Court.

[13] The third suit was filed by the respondent against the appellant. On 23May 1992 the High Court allowed the respondent's application for a *mareva* injunction against the appellant to the extent of RM800,000. By a letter dated 25 May 1992 the solicitors for the appellants applied for further argument of the application of the respondent for a *mareva* injunction in open court, but later it was rejected by the High Court.

[14] Meanwhile, on 27 April 1994 the High Court allowed the consolidation of the third suit with the first and second suit ('the consolidated suits'). By consent of the parties, the consolidated suits were ordered to be transferred to Melaka High Court by order of the High Court dated 24 August 1995 and registered as Melaka Civil Suit No 22–3 of 1996.

[15] Vacant possession of the said premises was delivered to the respondent on 15 August 1994.

[16] The trial in the consolidated suits was concluded on 12 December 2003. The learned judge dismissed the first and second suits with costs. Inrespect of the third suit the learned judge ordered the appellant to pay to the respondent single rental from 1 July 1991 to4 August 1994 to be assessed by the Senior Assistant Registrar ('SAR'), together with interest thereon at 8% per annum from 14 August 1994 to the date of the judgment (12 December 2003) with costs to be taxed. The counterclaim of the appellant was allowed to the extent that the respondent pay the appellant damages for unlawful entry into the premises from 1 August 1991 to 20 August 1991 and ordered the same to be assessed by the SAR. The respondent was ordered to pay the appellant's cost of the counterclaim to be taxed. Finally the learned judge ordered that the respondent's application for a *mareva* injunction be postponed for further argument if the respondent was still desirous of proceeding with the mareva injunction.

[17] Before us the appellant submitted on four issues, namely:

(i) that the costs should not have been awarded against the appellant as the learned judge had found that there was a tenancy in his favour until 14 August 1994.

(ii) that the appellant should not have been made to pay interest on the rental found to have been payable by him.

(iii) that the respondent should have been made liable for damages for breach of tenancy as the learned judge had found as a fact that the entry by force of the respondent was illegal.

(iv) that the *mareva* injunction obtained against the appellant should have been set aside by the judge and a consequential order for damages should have been made upon the undertaking given to the court.

[18] At the conclusion of arguments by both the parties, we dismissed the appeal and counterclaim of the appellant with costs here and below and ordered that the deposit be paid towards the account of taxed costs. We further ordered that the orders of the High Court dated 12 December 2003 be set aside. We allowed the cross-appeal by the respondent and ordered the appellant to pay RM22,500 being rental for period from 1 July 1991 to 14 August 1991 and a further sum of RM1,872,000 as damages for trespass for period from 15 August 1991 to 14 August 1994 plus interest on the judgment sums at 8% per annum from 14 August 1994 to the date of the judgment. Lastly, the *mareva* injunction dated 23 May 1992, having expired on conclusion of the trial, was ordered to be discharged forthwith.

FINDINGS COSTS

[19] On the question of costs, it must be observed that the respondent was successful in obtaining judgment against the appellant in respect of its alternative claim for single rental from 1 July 1991 to 14 August 1994. Hence the respondent was entitled to costs as costs follow the event: O 59 r 3(2) of the Rules of High Court 1980 ('RHC').

[20] In *Petroliam Nasional Bhd (Petronas) & Anor v Cheah Kam Chiew* [1987] 1 MLJ 25, Hashim Yeop A Sani SCJ, in delivering the judgment of the Supreme Court at p 26 C right said:

> The general principle envisaged in the rule is simply that costs follow the event and that the successful party is entitled to be paid his costs except when it appears to the court that in the circumstances of the case some other order should be made...

[21] His Lordship then continued:

> ... an appellate court does not interfere in the question of costs without reluctance.
>
> This is because the court below has an absolute discretion except that the discretion must be exercised judicially. An appellate court should not interfere unless it can be shown that there has been an error of law or the purported exercise of discretion was based on grounds wholly unconnected with the cause of action.

[22] It is important to note that costs are always in the discretion of the court. In the present case, the appellant had not shown any good reason or any ground whatsoever that the learned trial judge had misdirected himself on the law and or on the facts on the question of costs. Thus, the learned judge had exercised his discretion correctly in the circumstances of the case.

INTEREST

[23] The learned judge in giving judgment in favour of the respondent on 12 December 2003 made an order that the appellant was to pay to the respondent single rental from 1 July 1991 to 14 August 1994 to be assessed by the SAR together with interest thereon at 8% per annum from 14 August 1994 to the date of the judgment. There is no question that by virtue of s 11 of the Civil Law Act 1956 (Act 67) interest at the rate of 8%, as the learned judge thought fit to impose in this case, would have to be paid on that judgment sum from 14 August 1994 until the date of the judgment.

[24] Unlike O 42 r 12 of the RHC which governs only the post-judgment interest, s 11 of Act 67 provides for the pre-judgment interest. Section 11 clearly confers on the court a discretion to award interest on the amount for the period before judgment and the said section reads as follows:

> 11 In any proceedings tried in any court for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:
>
> Provided that nothing in this section:
>
> (a) shall authorise the giving of interest upon interest;
>
> (b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
>
> (c) shall affect the damages recoverable for the dishonour of a bill of exchange.

[25] The basis on which the courts have acted in awarding interest under this section is that the defendant has kept the plaintiff out of the money which ought to have been paid to him and since the defendant has had the use of the money the defendant ought to compensate the plaintiff accordingly. In *Harbutt's 'Plasticine' Ltd v Wayne Tank & Pump Co Ltd* [1970] 1 QB 447, Lord Denning, at p 468 said:

> An award of interest is discretionary. It seems to me that the basis of an award of interest is that the defendant has kept the plaintiff out of his money; and the defendant has had the use of it himself. So he ought to compensate the plaintiff accordingly.

See also *Lim Cheng Wah v Ng Yaw Kim* [1985] 2 MLJ 82.

[26] Thus, we see no reason why the learned judge, in exercise of his discretion, should not award interest. In accordance with the general principle that where discretion is given to a judge, the appellate court ought not to review his decision unless he has declined to exercise his discretion or has manifestly proceeded on a wrong ground. In this case, the learned judge had exercised his discretion correctly.

BREACH OF TENANCY AGREEMENT

[27] We agree with the respondent that there was no breach of tenancy agreement by the respondent. It was the contention of the respondent that there was no oral tenancy agreement between the parties and even if there was, the appellant had repudiated the same by failing or refusing to pay the rent from 1 July 1991 to 14 August 1994 thereby entitling the respondent to terminate the contract and sue the appellant for the damages.

MAREVA INJUNCTION

[28] It is pertinent to note that the respondent had already obtained the mareva injunction on 23 May 1992 and it was the appellant who applied for further argument in open court in respect of the said injunction. Therefore, since the appellant had failed to pursue it at the trial the learned judge ought to have dismissed the said application. Moreover, the *mareva* injunction expired on the conclusion of the trial. Hence, we ordered it to be discharged forthwith.

[29] Now we come to the respondent's cross-appeal.

CROSS-APPEAL APPELLANT'S COUNTERCLAIM

[30] Respecting the appellant's counterclaim in the third suit, the learned judge held that the respondent's forceful entry of the premises from 1 August 1991 to 20 August 1991 was illegal and thus entitling the appellant to damages. Onthis point, the learned judge overlooked the fact that he had held that SM, being a partnership, was not entitled in law to hold a tenancy and that it was SM and not the appellant who was in occupation of the premises during the said period.

[31] Besides, it was not in dispute that the appellant did not pay the July 1991 rental to the respondent. As such, the learned judge misdirected himself in not holding that since the appellant did not pay the said rental, the appellant had repudiated the tenancy and hence the respondent's entry into the said premises from 1 August 1991 to 20 August 1991 was not unlawful and therefore the appellant's counterclaim for damages ought to have been dismissed with costs by the learned judge. In the event, we allowed the respondent's cross-appeal and dismissed the appellant's counterclaim.

RESPONDENT'S CLAIMS

[32] The substance of the respondent's claim against the appellant was that the appellant had failed to pay the rental for the premises from 1 July 1991 to 14 August 1994. On the other hand, the main trust of the appellant's case was that the respondent had granted the appellant an oral tenancy of 3 years from 15 August 1991 to 14 August 1994 at a monthly rental of RM26,000. In that event, the learned judge ought to have fixed the monthly rental of RM26,000 rather than left it to the SAR to assess the same.

[33] In our judgment the learned judge was erroneous in failing to consider whether in the first place there was a concluded oral contract for a tenancy for a further three year term from 15 August 1991 to 14 August 1994 as alleged by the appellant and secondly, if there was such a concluded contract, whether the appellant had performed his obligation to pay the rental for the said period and conversely, whether the appellant had repudiated the said contract, if any.

[34] Further, we agree with the respondent that the learned judge erred in failing to hold that since the appellant did not pay the rent for July 1991 he was in breach of contract and had repudiated the tenancy and accordingly the respondent was entitled in law to terminate the tenancy and re-enter the premises on 1 August 1991.

[35] Consequently, when the appellant persisted in remaining in occupation of the premises from 1 August 1991 to 14 August 1994 without paying any rent for the entire period, he was wilfully in unlawful occupation thereof and was in law a trespasser which entitled the respondent to claim double rent. Section 28(4)(a) of Act 67 provides:

> Every tenant holding over after the determining of his tenancy shall be chargeable, at the option of his landlord, with double the amount of his rent until possession is given up by him or with double the value during the period of detention of the land or premises so detained, whether notice to that effect has been given or not.

See *Wee Tiang Yap v Chan Chan Brothers* [1986] 1 MLJ 47 where a claim for double rent was awarded for trespass against the respondent who had wilfully remained on the premises after expiry of the tenancy.

[36] Thus, the learned judge erred in law in not awarding double rental in the present case. He misdirected himself when he considered the hardship that the appellant would have to bear if double rental was ordered against the appellant. On this point, the learned judge ought to have decided the issue strictly on the facts and on the law and not on sentiment. His decision is therefore vulnerable to appellate interference.

[37] It is trite law that an appellate court will not readily interfere with the findings of fact arrived at by the trial court to which the law entrusts the

primary task of evaluation of the evidence. However, in the instant case, this court had a duty to interfere because the trial court had misdirected itself in many instances that no reasonable court which had properly directed itself and asked the correct questions would have arrived at the same conclusion (see *Sivalingam a/l Periasamy v Periasamy & Anor* [1995] 3 MLJ 395).

[38] In the event we made the orders accordingly.

Appellant's appeal dismissed. Respondent's appeal allowed.

Reported by Peter Ling